

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ON AIR ENTERTAINMENT CORP.,	:	CIVIL ACTION
NISE PRODUCTIONS, INC. and	:	
MICHAEL NISE,	:	NO. 96-2597
Plaintiffs,	:	
	:	
v.	:	
	:	
NATIONAL INDEMNITY CO.,	:	
Defendant.	:	

M E M O R A N D U M

BUCKWALTER, J.

August 14, 1998

On October 3, 1997, having heard plaintiffs' testimony and reviewed plaintiffs' exhibits and proffers in support of their claims, I orally directed that a judgment as a matter of law be entered in favor of defendant on plaintiffs' bad faith claim as well as their claim for intentional infliction of emotional distress.

Having previously ruled that defendant was obligated under the terms of its insurance policy to tender a defense on behalf of plaintiffs in the Vadakin and Festa actions brought against plaintiff, the only remaining issue was what plaintiffs were owed on account of attorney's fees they incurred prior to defendant undertaking the defense of the Vadakin and Festa cases.

The attorney fee issue was then scheduled for trial on June 30, 1998. Prior to trial, defendant filed a Motion in Limine to bar plaintiffs' claim for attorney's fees arising out of the defense of the Vadakin action. I ruled in defendant's favor in light of the release plaintiffs signed which effectively extinguished any right plaintiffs might have to attorney's fees in the Vadakin case.

With respect to the remaining claim of attorney's fees in the Festa case, plaintiffs waived a trial by jury and presented their testimony at a hearing before this court on June 30, 1998.

At the conclusion of the trial, I gave defendant twenty-one (21) days in which to file its brief on the attorney fee issue. Plaintiffs were given ten (10) days to respond or "if for some reason that's impossible for you (plaintiff's counsel) to do, you'll notify me (the court) of that, but normally I would expect the response in ten days." (N.T. 6/30/98, pp. 81, 82).

Defendant filed a memorandum of law on July 21, 1998. Plaintiffs' untimely response was filed August 12, 1998, no request having been made for an extension. It should be noted that plaintiffs were not required to reply since defendant's memorandum was simply in response to plaintiffs' supplemental pretrial memorandum regarding damages. I have nevertheless reviewed plaintiffs' response.

In its memorandum, defendant contends that the most plaintiffs are entitled to is \$26,656.36 in attorney's fees for the defense of the Festa action, those being reasonable attorney's fees incurred from 2/1/91 through 2/29/92. Defendant also states that prejudgment interest calculated at 6% per annum would be \$10,675.42.

Plaintiffs claim \$35,033.56 for attorney's fees from 1/92 through 2/92 plus interest of \$14,007.69. In addition, plaintiffs claim additional attorney's fees after 2/92, including an additional \$10,641.76 paid to Miller, Dunham & Doering, plus additional interest of \$3,927.27 and attorney's fees in excess of \$10,000.00 paid to Seth Jamison and Spector, Gadon & Rosen from 7/12/92 to 5/27/93. The latter fees due Jamison and Spector, Gadon & Rosen are clearly not the responsibility of defendant, contrary to plaintiffs' assertion in their response.

As to the additional Miller, Dunham & Doering fees, I find from the testimony that this was for services being done for the benefit of defendant. It was not until June 9, 1992 that Joyce S. Meyers evidenced her intention that Joan Daly should actively move ahead with discovery. Shortly thereafter, Ms. Meyers withdrew from the Festa case. It is clear from the letter of February 26, 1992 that Ms. Meyers was to be co-counsel with Ms. Daly and to continue for all practical purposes her efforts toward the settlement of the Festa action. Ms. Daly did not

formulate her plan of attack and actively engage in Festa until June or July of 1992.

Accordingly, I believe plaintiff is entitled to fees in the amount of \$45,675.12 and interest thereon at the rate of 6% per annum in the amount of \$17,924.96.

An order follows.

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	:	
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	:	
NATIONAL INDEMNITY CO.,	:	
Defendant.	:	

O R D E R

AND NOW, this 14th day of August, 1998, judgment is entered in favor of plaintiffs On Air Entertainment Corp., Nise Productions, Inc. and Michael Nise, and against defendant National Indemnity Co. in the principal amount of \$45,675.12, plus interest of \$17,924.96.

BY THE COURT:

RONALD L. BUCKWALTER, J.